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HR

WORKERS' COMPENSATION 101

Presented to:

House Business & Labor Committee - 2011

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WORKERS' COMPENSATION INSURANCE

Paid for by employers

Provides: Cash benefits

Medical care

Rehabilitation Services

To workers who experience work related
injuries or occupational diseases

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WORKERS' COMPENSATION PRINCIPLE – TWO ELEMENTS

- 1) No Fault System
 - Employee doesn't have to prove employer negligence
 - Employee only has to prove the injury/OD is work-related
- 2) Exclusive Remedy
 - Statutory benefits are the employer's only liability
 - Employee cannot bring tort suits against their employer

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WORKERS' COMPENSATION ACROSS THE UNITED STATES

- No federal regulation of workers' compensation
- All 50 states have workers' compensation acts –
All mandatory, except for New Jersey (elective) and Texas (elective).

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DECLARATION OF PUBLIC POLICY – INTENT – 39-71-105, MCA - OBJECTIVES

- Wage loss should bear reasonable relationship to actual wages lost
- Return worker to work as soon as possible
- Speedily obtain benefits
- Provide coverage at reasonably constant rates
- Minimize reliance upon lawyers and the Courts
- Construed according to its terms and not liberally in favor of any party

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Workers' Compensation Insurance

3 SOURCES OF COVERAGE

- Plan 1 - Self Insurance
- Plan 2 - Private Carrier
- Plan 3 - Montana State Fund

Costs vary but Benefits are identical

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WORKERS EXEMPT FROM MANDATORY COVERAGE – 39-71-401, MCA

■ 26 EXEMPTIONS

■ SOME EXAMPLES:

- Independent Contractors (ICs)
- Household or domestic
- Dependent members of an employer's family
- Real estate, securities, or insurance salespersons
- Newspaper carriers or freelance correspondents
- Barbers and cosmetologists
- Jockeys and other horseracing workers
- Respite care and companionship services
- Athletes engaged in contact sport

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MEDICAL CARE

- Injured worker has right to choose initial treating physician
- Insurer must authorize a change in treating physician
- Insurer may refer to managed care organization (MCO) or preferred provider organization (PPO)
- Reasonable and necessary medical care related to the injury/OD
- Insurer reimburses at amounts in Department fee schedules - cost containment
- No co-payments except the injured worker pays \$25 co-payment for subsequent ER visits
- Medical benefits terminate if not used for 60 consecutive months

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WAGE LOSS COMPENSATION

Indemnity Benefits

Cash Payments

- Waiting period - No wage loss paid for 1st 32 hours or 4 days
- Compensation begins on 5th day – no retroactive payment for the waiting period

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Temporary Total Disability Benefits (TTD)

- Temporarily unable to work any job
- Total loss of wages
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) – FY11 = \$633 per week
- Paid until injured worker reaches maximum medical improvement (MMI) and is released to return to work or returns to work

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Examples of TTD Calculations Based on TOI Wage at 40 hrs per Week – 66 2/3%

- Minimum Wage/\$7.25 per hr = \$290
TTD rate = \$193.33 per week
- \$10 per hr = \$400
TTD rate = \$266.67 per week
- \$25 per hr = \$1,000
TTD rate = \$633 (66 2/3% of \$1,000 = \$666.67 BUT capped at SAWW)

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Temporary Partial Disability Benefits (TPD)

- Temporarily able to work with limitations or modifications
- Partial loss of wages
- Difference between TOI wages and actual wages paid during TPD – not to exceed TTD rate
- Paid until MMI

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Examples of TPD Calculations Based on TOI Wage at 20 hrs per Week

- Minimum Wage/\$7.25 per hr x 40 hrs = \$290
Part-time wages @ 20 hrs = \$145
TPD = \$145
- \$10 per hr x 40 hrs = \$400
Part-time wages @ 20 hrs = \$200
TPD = \$200
- \$25 per hr x 40 hrs = \$1000
Part-time wages @ 20 hrs = \$500
TPD = \$500

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Permanent Partial Disability Benefits (PPD)

- Reached maximum medical improvement (MMI)
- Has a permanent impairment rating >0%
- Able to return to work in some capacity and
- Has an actual wage loss as result of injury/OD

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PPD Benefits - Continued

- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Capped at ½ SAWW or \$316.50 per week
- Impairment rating >0% and no actual wage loss
% is multiplied by 375 wks and paid at PPD rate
- Impairment rating >0% with actual wage loss
- Add percentages for following factors:
 - Impairment Rating
 - Age
 - Education
 - Restrictions
 - Wage Loss
- Multiply total % x 375 weeks for number of weeks at PPD rate

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Examples of PPD Calculations

- 2% impairment rating – NO wage loss
- 2% x 375 weeks = 7.5 wks x 66 2/3% TOI Wage or CAPPED AT ½ SAWW OR \$316.50
- TOI Minimum Wage or \$7.25 per hr = \$290
7.5 wks x \$193.33 = \$1,449.97
- TOI Wage \$10 per hr = \$400
7.5 wks x \$266.67 = \$2,000.02
- TOI wage = \$25 per hr = \$1,000
7.5 wks x \$316.50 = \$2,373.75

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Examples of PPD Calculations - Continued

- | | | |
|--------------------------|-----|---|
| ■ Impairment Rating | 5% | ■ TOI wage = \$10 per hr = \$400 per week |
| ■ 42 yrs old | 1% | 66 2/3% = \$266.67 X |
| ■ GED | 0% | 67.5 = <u>\$18,000.22</u> |
| ■ \$1 per hr wage loss | 10% | ■ TOI wage = \$25 per hr = \$1,000 per week |
| ■ Restrictions med-light | 2% | \$316.50 Max Rate |
| ■ TOTAL | 18% | \$316.50 x 67.5 = <u>\$21,363.75</u> |
- 18% x 375 = 67.5 wks
at PPD Rate (66 2/3% or capped at \$316.50)

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Permanent Total Disability Benefits (PTD)

- Reached MMI
- No reasonable prospect of physically performing regular employment
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) – FY11 = \$633 per week
- Cost of Living Increases every yr after 1st 104 weeks paid
- Paid until reach retirement age

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Death Benefits

- Paid to Beneficiaries
- 66 2/3% of time of injury (TOI) average weekly wage (AWW)
- Up to maximum State's average weekly wage (SAWW) – FY11 = \$633 per week
- Minimum is 50% of SAWW (\$316.50 – FY11) but may not exceed actual wage
- Burial Expense – Up to \$4,000

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Vocational Rehabilitation Benefits

- Eligible for Rehab Benefits if:
 - Disabled Worker – Permanent impairment that precludes worker from TOI job AND has an actual wage loss; or
 - Has a 15% or greater impairment rating and no actual wage loss
- A vocational rehabilitation provider develops written plan for return to work or retraining
- Benefits paid for specified period in plan up to 104 weeks
- Paid at same rate as TTD benefits – 66 2/3% of TOI wage – capped at SAWW

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Compromise Settlements & Lump Sum Payments

Biweekly payments are the rule
 Lump sum payments are the exception
 Certain settlements and lump sum payments are allowed
 All settlements must be approved by the Department or the Workers' Comp Court depending on date of injury/OD

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Department May Approve

- All benefits if insurer disputes initial compensability of a claim
- PPD benefits
- PTD benefits only if worker demonstrates financial need
- Future medical benefits if an insurer disputes continued liability for medical benefits and there is a reasonable dispute over the medical treatment or compensability
- All settlements must be converted to present value

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Dispute Resolution Mediation

- Purpose – Resolve disputes at lowest level possible
- Any and all benefit disputes – including medical disputes over authorization or payments of medical bills
- Mandatory
- Informal
- Non-Binding
- Confidential
- 80% resolution rate

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Workers' Compensation Court

- Effective July 1, 1975 – Legislature established the Workers' Compensation Court
- Appeals go directly to the Montana Supreme Court

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